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November 29, 2010

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave, NW  
Washington, DC 20530-0001

Dear Mr. Holder:

I am contacting you regarding a case that has greatly impacted upon many of my Jewish constituents in New York's 11<sup>th</sup> Congressional District whom I have the privilege of representing. I am a firm believer that the American judicial system is the best in the world and that judges should be given discretion in sentencing. I have opposed mandatory minimums throughout my public life as they often times result in sentences that do not necessarily fit the crime. While our system is one of the best, unfortunately it does not always get it right.

The sentence of Sholom Rubashkin is an instance where I believe our system got it wrong and the punishment does not fit the crime. Sholom Rubashkin, whose family and supporters are constituents from the Orthodox Jewish communities of Brooklyn, was the former CEO/VP of Agriprocessors, a kosher meatpacking plant in Postville, Iowa, which was subject to a May 12, 2008 federal immigration raid. While the case began as an immigration raid, Mr. Rubashkin ended up facing a 163 count federal indictment that included 91 federal bank fraud charges. However, the government dropped the federal immigration charges and Mr. Rubashkin was found guilty of 86 of the 91 bank fraud charges, ruling that First Bank Business Capital of St. Louis was defrauded of \$26 million. The presiding judge, the Honorable Linda Reade of the Northern District of Iowa, sentenced Mr. Rubashkin to 27 years in prison.

I believe that this unusually severe sentence is cause for concern for several reasons. First, Mr. Rubashkin was a first-time white-collar offender. At no time did the trial prove Mr. Rubashkin intended to inflict malicious harm to any individual working for, or associated with, Agriprocessors. Secondly, the prosecution in this case requested a 25-year sentence for Mr. Rubashkin. Before sentencing Mr. Rubashkin, Judge Reade was contacted by former Justice Department officials, as well as six of your predecessors, decrying the severity of a 25-year sentence as a misreading of federal white-collar sentencing guidelines. Judge Reade not only disregarded these overtures, but sentenced Mr. Rubashkin to two more years than the prosecution requested.

While these are all reasons for concern, the most troubling aspect of Mr. Rubashkin's sentence is how much more severe his sentence is in light of white-collar criminals whose crimes were far more severe in scope, monetary loss and effect.

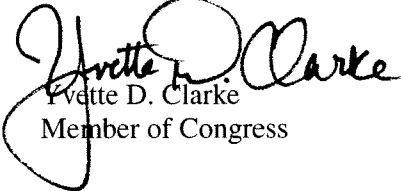
- Former Tyco CEO Dennis Kozlowski and CFO Mark Swartz were convicted of stealing hundreds of millions of dollars and each received a sentence of only 8 1/3 - 25 years.

- Former Enron CEO Jeffrey Skilling, who was convicted of orchestrating the largest corporate fraud in history resulting in the collapse of a company worth over \$63 billion, only received a 24 year sentence.
- Bernie Ebbers, the former CEO of WorldCom, whose accounting fraud covered \$11 billion, received 25 years.

These are just a few circumstances of individuals that received lesser sentences than Mr. Rubashkin, and whose damage upon the economy and American people were unquestionably more severe. The collapse of Enron not only resulted in the collapse Arthur Andersen, then-one of the largest accounting firms in the world, but wiped out the retirement savings of thousands of Americans. Tyco and Worldcom's fraud, while not as severe as Enron's, also had a major impact on a wide range of Americans. The fact that Mr. Rubashkin received a more severe sentence than any of those mentioned is troublesome and inconsistent with having the punishment fit the crime, and fairness. Therefore, on behalf of my constituents who have come to me seeking justice in this case, I am requesting that you launch a formal inquiry into the sentencing phase of this case.

If you have any questions and/or concerns regarding this matter, please feel free to reach out to me if I can be of any assistance. I thank you for your kind consideration of this matter and I look forward to hearing from your good offices.

Sincerely,



Yvette D. Clarke  
Member of Congress